ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Accounting for Judgments and	)	CC Docket No. 93-240
Other Costs Associated with	)	
Litigation	)	

GTE's REPLY COMMENTS

GTE Service Corporation and
its affiliated domestic
telephone operating companies

Richard McKenna, HQE03J36
GTE Service Corporation
P.O. Box 152092
Irving, TX 75015-2092
(214) 718-6362

Gail L. Polivy
1850 M Street, N.W.
Suite 1200
Washington, DC 20036
(202) 463-5214

Their Attorneys

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GTE Service Corporation and its affiliated domestic telephone operating companies, with reference to the Notice of Proposed Rulemaking (released September 9, 1993) (the "*Notice*" or "*NPRM*") and in response to comments filed by various parties, submits reply comments.

GTE supports the submission of the United States Telephone Association ("USTA") and adds the following further points.

DISCUSSION

1. In support of USTA's comments, GTE suggests present Commission rules will accommodate any questions likely to arise.

Section 32.25 of the Commission's rules, entitled "Unusual Items and Contingent Liabilities," provides for Commission review in advance of extraordinary items, prior period adjustments and contingent liabilities before recording in the company's books of account. It also provides that specified corrections for Class A and Class B carriers may be so recorded without prior approval. In GTE's view, this already existing provision of the rules provides the Commission with ample oversight to ensure protection of the ratepayer.

The *Notice* does not show that Section 32.25 and its application has raised any problems not well within the Commission's jurisdiction and power to resolve. The complex procedures proposed by the *Notice* would be costly and burdensome, and are simply unnecessary. Moreover, given the differences acknowledged by the *Notice* (at

paragraphs 26-29) between the letter and spirit of the two *Mountain States* cases[1], pursuing these proposals will be certain to involve another lengthy struggle in court concerning matters of little practical effect and very likely another remand.

In a different context[2], Commissioner Quello spoke of "a solution in search of a problem."[3] The proposals of the *Notice* are just such a "solution." There is no firm reason to believe there will be a requirement in the forseeable future for the FCC to decide the policy questions raised by the *Notice*; if and when such a requirement arises, any decision can be made in light of the relevant facts of the particular case under Section 32.25 of the Rules.

In contrast, adopting the proposals of the *Notice* would amount to deciding a potentially complex matter far in advance of a need for decision, and deciding it in the abstract, without knowledge of the particular aspects of any controversy that might arise. Under these circumstances, in violation of the rule of administrative economy, controversies will have to be re-decided time and again to take account of varying factual patterns. With the FCC and the industry facing perhaps the greatest challenges in their history -- challenges that follow from the need to assure universal service in an environment of enhanced competition -- the resources of government and industry could be far better expended in dealing with these challenges than in another tiresome and unproductive run through the thicket of judgments, settlements and litigation costs.

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1 The Mountain States Tel. & Tel. Co. v. FCC, 939 F.2d 1035 (D.C. Cir. 1991); and The Mountain States Tel. & Tel. Co. v. FCC, 939 F.2d 1021 (D.C. Cir. 1991).

2 Expanded Interconnection with Local Telephone Company Facilities, CC Docket No. 91-141, Report and Order and Notice of Proposed Rulemaking, 7 FCC Rcd 7369 (1992), *modified on reconsideration*, 8 FCC Rcd 127 (1992), *modified on further reconsideration,* Second Memorandum Opinion and Order on Reconsideration (released September 2, 1993), *petitions for review pending sub nom.* The Bell Atlantic Tel. Cos v. FCC, Nos. 92-1619 and 1620 (D.C.Cir. November 25, 1992) (the "*Special Access Order*".

3 Separate Statement of Commissioner Quello, *Special Access Order*, 7 FCC Rcd at 7514.

In GTE's view, (1) the rule changes proposed by the *Notice* are completely unnecessary because any issue that arises can be dealt with under existing rules; and (2) consequently, adoption of these rules would impose significant burdens without justifying benefits.

In summary: Existing FCC rules provide the Commission with the way to deal with any problems that may arise.

2. The price caps plan makes the *NPRM* proposal unnecessary.

When the Commission first started to address these matters, price caps had not been developed. Now, for the Tier 1 exchange carriers and for AT&T, price caps plans are in effect.[4] The intent of these plans is to avoid the inefficient and unproductive administrative churning characteristic of rate of return regulation.[5] The sharing backstop was intended to provide protection for the ratepayer if the Commission had selected too low a productivity target without sacrificing the essential objectives of price caps as identified by the Commission. It was never intended to defeat the core of the price caps plan.

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[4] Policy and Rules Concerning Rates for Dominant Carriers, Second Report and Order, CC Docket No. 87-313 ("*D.87-313*"), Report and Order and Second Further Notice of Proposed Rulemaking, 4 FCC Rcd 2873 (1989), and Erratum, 4 FCC Rcd 3379 (1989), ("*D.87-313 Report & Order*"), Second Report and Order, 5 FCC Rcd 6786 (1990), and Erratum, 5 FCC Rcd 7664 (1990), *LEC Price Cap Order*"), *modified on recon.*, 6 FCC Rcd 2637 (1991) ("*LEC Price Cap Reconsideration Order*"), *aff'd. sub nom.* National Rural Telecom Association, 988 F.2d 174 (D.C. Cir. 1993).

[5] Incentive regulation was designed to avoid the inefficiencies and distorting effects of rate of return regulation. Measuring alternative regulatory methods against the rate of return system, the Commission identified five flaws in rate of return regulation: (1) it provides incentives for carriers to be inefficient; (2) it provides carriers with insufficient incentives to encourage innovation; (3) it tends to foster cross-subsidization and inability to move toward an optimally efficient set of prices; (4) its administrative costs are high; and (5) consumers are better off under incentive regulation than rate of return regulation. *D.87-313 Report & Order*, 4 FCC Rcd at 2922.

This means, given the price caps system, there is far less justification for detailed examination of specific cost items because it is highly unlikely that these cost items will have any practical effect.

In view of this reality, the *Notice* leads the way in precisely the wrong direction. It proposes to spend more resources in the pursuit of information as that information becomes less significant. The industry has operated under FCC regulation for sixty years without the *NPRM* rules. The rules now proposed would involve exchange carriers in a data-collection effort of formidable dimensions against the eventuality that possibly this data might at some time in the future have an effect on sharing under price caps.[6]

The sharing feature of price caps was designed as a back-stop mechanism in light of relative uncertainty regarding exchange carriers' productivity.[7] To use the existence of sharing as justification for a reversion to detailed cost-of-service recordkeeping -- indeed, an increase in such recordkeeping beyond what has existed in the past -- would be to defeat the whole purpose of the Commission's plan.

In summary: For carriers under price caps, there is no justification for adopting the *NPRM*-proposed rules.

3. GTE urges the Commission to rely on its existing rules rather than imposing new recordkeeping burdens.

Nothing prevents the Commission, under Section 32.25 of its own rules, from examining a company's recording of items outside the scope of the Section 32.25 parameters and taking appropriate action. This does not contemplate removal from regulated accounts of legal expenditures that constitute a normal part of the cost of

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6 *NPRM* at paragraph 7.

7 The sharing device was carefully described as simply a "backstop" -- not as an inversion of the entire plan and a return to the very irrationalities the plan was constructed to escape. *LEC Price Cap Reconsideration Order*, 6 FCC Rcd at 2683-84; *LEC Price Cap Order*, 5 FCC Rcd at 6801.

doing business in a highly regulated and litigious society. Extraordinary items are already subject to more than adequate Commission review under Section 32.25, and for price cap carriers any such items would further entail review in terms of the exogenous rule.[8]

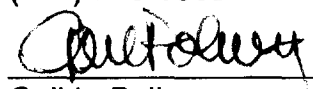
Thus, the Commission already has the means and the mechanism to protect the ratepayer. Invention of an entirely new set of recordkeeping requirements is completely unnecessary and would represent unsound and inconsistent public policy.

In summary: GTE urges the Commission to put aside the proposals of the *Notice* and to rely on its existing rules to deal with whatever problems may arise case by case.

Respectfully submitted,

GTE Service Corporation and
its affiliated domestic
telephone operating companies

Richard McKenna, HQE03J36
GTE Service Corporation
P.O. Box 152092
Irving, TX 75015-2092
(214) 718-6362



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1850 M Street, N.W.
Suite 1200
Washington, DC 20036
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[8] *See* Treatment of Local Exchange Carrier Tariffs Implementing Statement of Financial Accounting Standards "Employers Accounting for Postretirement Benefits Other Than Pensions", CC Docket No. 92-101, 8 FCC Rcd 1024 (1993), *petition for review pending sub nom.* Southwestern Bell Tel. Co. v. FCC, No. 93-1168 (D.C. Cir., filed February 19, 1993).

Certificate of Service

I, Javae D. Smith, hereby certify that copies of the foregoing "GTE's Reply Comments" have been mailed by first class United States mail, postage prepaid, on this 5th day of November, 1993 to all parties of record.

Javae D. Smith